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September 19, 1994

HENRY A. SOLOMON

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

OUR FILE NO.
1228-101-63

Mr. William F. Caton, Acting Secretary
Federal Communications Commission
1919 M Street, NW
Washington, DC 20554

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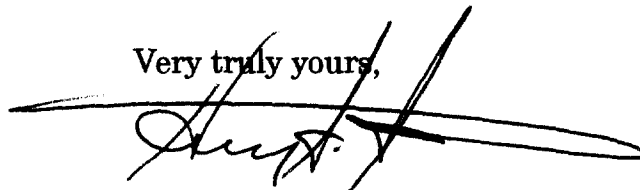
RE: Docket No. PP 93-253
FCC 94-178
Reply and Comments

Dear Mr. Caton:

Transmitted herewith, on behalf of The National Paging & Personal Communications Association, are an original and 11 copies of its **REPLY AND COMMENTS TO OPPOSITIONS TO PETITIONS FOR RECONSIDERATION**, in the above-referenced proceeding.

Should further information be desired, kindly communicate directly with this office.

Very truly yours,



Henry A. Solomon

Enclosures (12)

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Before The
Federal Communications Commission
Washington, D.C. 20554

COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In The Matter Of)
)
Implementation of Section 309(j))
of the Communications Act --)
Competitive Bidding)
)

Docket No. PP 93-253
FCC 94-178

TO: The Commission

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Reply and Comments to Oppositions to Petitions for Reconsideration

The National Paging & Personal Communications Association ("NPPCA"), by its attorneys and pursuant to Section 1.429(g) of the Commission's Rules, hereby submits its Reply and Comments to Oppositions to Petitions for Reconsideration to the *Fifth Report and Order*, FCC 94-178, released July 15, 1994 (FEDERAL REGISTER, 59 Fed. Reg. 37566 (Daily ed. July 22, 1994) (hereinafter "*Fifth Report and Order*")). In support hereof, the following is shown:

NPPCA urges the Commission to remember the Congressional directive in the Communications Act that the FCC design competitive bidding with the objective of "promoting economic opportunity . . . by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including *small businesses*. . . ." 47 U.S.C. § 309(j)(3)(B)(emphasis added). The Act specifically requires that the regulations "promote . . . economic opportunity for a wide variety of applicants, including small

businesses" and "ensure that small businesses . . . and business owned by members of minority groups and women are given the opportunity to participate in the provision of spectrum-based services. . . ." 47 U.S.C. § 309(j)(4)(C) & (D).

Given the legislative intent, the FCC should adopt rules that meaningfully include entities and individuals who would otherwise be excluded by the very nature of competitive bidding. The narrowband PCS auctions included, for example, minority-owned and controlled bidders, none of whom won licenses. Hence, NPPCA defends its position, against the complaint of mid-sized and comparatively large companies, that the financial eligibility caps for participation in the Entrepreneurs' Blocks should be "reduced" to provide an equitable opportunity for small businesses. Further, while NPPCA would like to see the Entrepreneurs' Blocks auctioned before Blocks A and B, NPPCA supports a compromise that would follow the FCC's auction sequence if the licenses for Blocks A and B are not issued until the licenses for Blocks C and F are issued. Finally, NPPCA submits that the congressional intent of Section 309(j) of the Act requires that the FCC adopt rules that not only do all that is possible to provide opportunities for women and minorities in the bidding process but also ensure their "participation in the provision of spectrum-based services" (*id.*) through opportunities for employment and advancement in PCS companies.

Small Businesses Must Be Given Meaningful Opportunities

Nowhere in the Communications Act does the Congress direct the FCC to make provisions in the auction rules for mid-sized companies. BET Holdings, Inc. ("BHI"), however, criticized NPPCA's proposal to reduce the financial eligibility caps from \$125 million to \$75 million in annual revenues and from \$500 million to \$250 million in assets because it would squeeze out mid-sized companies.¹ As presently crafted, the Entrepreneurs' Blocks pits the groups for whom Congress specifically stated the FCC must create opportunities against established, mid-sized companies and what NPPCA considers to be large companies, thereby effectively diluting the opportunities for truly small businesses.

Knowing that broadband PCS will consume substantial start-up capital, NPPCA suggested a moderate revision to the eligibility rules for the Entrepreneur's Block. There would be no change in the small business definition. NPPCA's proposed revision simply would limit the Entrepreneur's Block to entities with \$75 million in annual revenues and \$250 million in assets -- companies of still significant size when compared to traditional small businesses. Larger companies can still invest in entities eligible for the Entrepreneurs' Blocks so long as those "mid-sized" or large companies do not hold a controlling interest.

Moreover, mid-sized companies can certainly participate in bidding on the other 90 MHz of spectrum allocated to broadband PCS.

¹ BHI Opposition at pp. 17-18.

NPPCA urges the Commission to limit the remaining 40 MHz of spectrum to the entities Congress targeted.

The Auction Schedule Must Not Harm Designated Entities

NPPCA continues to believe that holding the auctions for the Entrepreneurs' Blocks prior to the auctions for Blocks A and B will cause the large companies to take a present interest in backing small businesses, and businesses owned by women and/or minorities ("Designated Entities") rather than encouraging the "wait and see" attitude that prevails under the current plan. In opposition to NPPCA's position, BHI believes that the availability of price information and expected increase in accessibility of capital by retaining the auction sequence will outweigh advantages afforded by early market entry.² Although BHI's argument does not address the problem of the "wait and see" investment attitude, NPPCA's concern about the head start of the licensees winning Blocks A and B, if auctioned first, would be cured if the Commission auctioned the Entrepreneurs' Blocks within 60 days after the auctions for Blocks A and B, provided that the licenses for Blocks A and B were not issued ahead of the licenses for Block C and F.³ Holding the Entrepreneurs' Blocks auctions within 60 days of the auctions for Blocks A and B will give the disappointed bidders for Blocks A and B the minimum amount of time to arrange to invest in bidders for Blocks C and F

² BHI Opposition at pp. 18-19.

³ See "Limited Opposition to Petition for Reconsideration of Encompass, Inc.," at pp. 3-4.

while minimizing the delay in the issuance of the licenses for Blocks A, B, C and F.

Opportunities to Participate in Spectrum-Based Services Should Include Employment and Advancement Opportunities

NPPCA urges the FCC to follow the legislative intent expressed in the auction statute to provide opportunities for minorities and women in spectrum-based services. As it auctions spectrum for PCS and other services, the Commission needs to be mindful of its social responsibility to adopt rules that provide opportunities for Designated Entities. Section 309(j)(4)(D) of the Communications Act states that the Commission can utilize "other procedures" to ensure such participation. Hence, the FCC should consider, when it licenses PCS, reviews license renewal applications, or when it approves the transfer and assignment of PCS licenses, the opportunities that the licensees create for women and minorities to participate in the provision of spectrum-based services.

Millions of Americans feel victimized by the loss of jobs due to company closings and downsizing, job phaseouts, and company relocations. The expected economic impact and employment opportunities that the new wireless telecommunications services will provide promise to generate millions of jobs and thousands of new business startups.

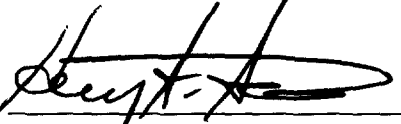
Some of the opportunities that PCS and other wireless communications services were predicted to provide have already

started to be realized. The spectrum license auctioning process is well underway. Companies have already purchased narrowband spectrum licenses and some have been awarded licenses as "pioneers."

Employment and career advancement opportunities are the next two most critical issues confronting millions of Americans who will seek to fill the jobs that will be created by the existing and new companies in wireless telecommunications. Historically, females and minorities seeking employment and career advancement opportunities in the telecommunications industry have been disproportionately relegated to the layman, administrative, and clerical positions. The Commission should consider procedures for ensuring that employment and career advancement opportunities are provided to minorities and women once spectrum-based licenses are issued. In the coming months, NPPCA will be actively working to encourage the industry to provide employment and advancement opportunities for minorities and women in the telecommunications marketplace

Respectfully submitted,

NATIONAL PAGING AND PERSONAL
COMMUNICATIONS ASSOCIATION

By: 
Henry A. Solomon

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Its Attorney

September 19, 1994

CERTIFICATE OF SERVICE

I, Barbara L. Rascon, a secretary in the law offices of Haley, Bader & Potts, hereby certify that I have on this 19th day of September, 1994, sent copies of the foregoing **REPLY AND COMMENTS TO OPPOSITIONS TO PETITIONS FOR RECONSIDERATION** by First Class United States Mail, postage prepaid, or by hand-delivery, to the following:

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